

SERVED: November 13, 1992

NTSB Order No. EA-3736

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 13th day of November, 1992

_____)	
THOMAS C. RICHARDS,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-12774
v.)	
)	
TIMOTHY G. RIDPATH,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

The Administrator has appealed from the oral initial decision Administrative Law Judge William R. Mullins issued in this proceeding on September 24, 1992, at the conclusion of an evidentiary hearing.¹ By that decision the law judge affirmed an order of the Administrator to the extent it alleged that

¹An excerpt from the hearing transcript containing the initial decision is attached.

respondent had violated sections 61.3(c), 91.17(a)(2), and 91.17(c)(1) of the Federal Aviation Regulations, "FAR," 14 CFR Parts 61 and 91. However, because the law judge concluded that a violation of section 91.13(a) had not been shown, he modified the sanction to provide for a ten-month suspension of respondent's airman pilot and flight instructor certificates, instead of revocation.² On appeal, the Administrator contends that the law judge erred in dismissing the section 91.13 charge and in not

²FAR sections 61.3(c), 91.13(a), 91.17(a)(2) and (c)(1) provide as follows:

§61.3 Requirement for certificates, rating, and authorizations.

* * *

(c) Medical certificate. Except for free balloon pilots piloting balloons and glider pilots piloting gliders, no person may act as pilot in command or in any other capacity as a required pilot flight crewmember of an aircraft under a certificate issued to him under this part, unless he has in his personal possession an appropriate current medical certificate issued under part 67 of this chapter....

§91.13 Careless or reckless operation.

(a) *Aircraft operations for the purpose of air navigation*. No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

§91.17 Alcohol or drugs.

(a) No person may act or attempt to act as a crewmember of a civil aircraft--

* * *

(2) While under the influence of alcohol....

* * *

(c) A crewmember shall do the following:

(1) On request of a law enforcement officer, submit to a test to indicate the percentage by weight of alcohol in the blood...."

sustaining the sanction of revocation.³ We agree.

The August 19, 1992 Emergency Order of Revocation, which served as the complaint in this proceeding, alleged, among other things, the following facts and circumstances concerning the respondent:

1. At all times pertinent herein, you were the holder of airman pilot certificate no. 2125116 with airline transport pilot privileges. You also hold a Flight Instructor Certificate with single-engine and multi-engine ratings, issued on the basis of airman certificate no. 2125116.

2. On July 29, 1992, you acted as pilot in command of Civil Aircraft N5718R, a Cessna Model 172F, the property of another, on a flight in air commerce in the vicinity of Town and Country Airport, Lubbock, Texas. There was one student passenger aboard the aircraft.

3. During the above flight, you instructed your student in commercial pilot instruction maneuvers.

4. You served as a crewmember (safety pilot) when your student operated the aircraft under simulated instrument conditions.

5. While making an approach for landing on Runway 17, the aircraft crashed approximately 75 feet short of the intended runway.

6. At the time of the above flight, you acted as pilot in command and as a required pilot flight crewmember of a civil aircraft when you did not have a valid medical certificate. You were denied issuance of your medical certificate in January, 1992, for failure to report on your medical application your conviction for driving while

³The respondent has not filed a reply to the Administrator's appeal brief.

intoxicated.

7. At the time of the above flight, you acted as a crewmember of a civil aircraft while under the influence of alcohol.

8. Subsequent to the above flight, you, as a crewmember, refused the request of a law enforcement officer to submit to a test to indicate the percentage by weight of alcohol in the blood.

The Administrator introduced evidence in support of all contested allegations.

As a starting point, we must register our agreement with the Administrator that the sanction of revocation is warranted in this case whether the section 91.13 charge is sustained or dismissed. The respondent has not appealed from the finding that he acted as a crewmember while intoxicated by alcohol. Since we have sustained revocation where an airman with a prohibited blood alcohol level had been shown only to have attempted to act as a crewmember, see Administrator v. Gallagher, NTSB Order EA-3171 (1990), the appropriateness of revocation for respondent's proved conduct cannot seriously be doubted, without regard to his debated status as the aircraft's operator. Nevertheless, as discussed below, we do not share the law judge's apparent view that respondent cannot be found to have "operated" the aircraft within the meaning of section 91.13(a).

The law judge concluded that although respondent's role as a safety pilot when his student was operating under simulated instrument conditions made him a crewmember for purposes of section 91.17, the fact that respondent did not have a medical

certificate meant that he could not have acted as pilot-in-command since the student was himself a certificated pilot.⁴ Thus, the law judge reasoned, the respondent could not be found to have violated a regulation that prohibits careless or reckless operation because the licensed student, not the respondent, was the aircraft's operator. Assuming, arguendo, that the law judge's analysis would be correct if the respondent had not manipulated the controls at any time during the flight, it fails to take into account the respondent's testimony that he pulled back the yoke of the aircraft just before it touched down in an effort either to avert a crash or to minimize the likely damage if a landing short of the runway actually occurred. Transcript at 135. We think that respondent's unsuccessful action to prevent the accident demonstrates an involvement in the management of the aircraft that is sufficient to support the 91.13(a) allegation.⁵ See generally, Administrator v. Angell, NTSB EA-3683 (served October 5, 1992)(violations of FAR prohibitions against careless or reckless operation and acting as crewmember while intoxicated sustained on showing of respondent's manipulation of the controls during landing phase alone).

In view of the foregoing, we find that safety in air

⁴Under the FAR, a flight instructor instructing a rated pilot need not hold a medical certificate.

⁵Moreover, respondent's assumption of control from his student when exigent circumstances arose provides considerable support for a conclusion that he was the pilot-in-command of the aircraft. See Administrator v. Rajaratnam, NTSB Order EA-3497 at pp. 8-9 (1992).

commerce or air transportation and the public interest require affirmation of the Administrator's emergency order of revocation. Except for the law judge's disposition of the section 91.13 charge and his modification of the sanction sought by the Administrator, we adopt as our own the findings and conclusions of the law judge.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The Emergency Order of Revocation is affirmed in its entirety; and
3. The initial decision is reversed to the extent it dismissed the section 91.13(a) charge and reduced the sanction, and is affirmed in all other respects.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order. Member HART submitted the following concurring statement.

CONCURRENCE BY ME-3
REGARDING NOTATION No. 5913
November 9, 1992

CONCURRENCE BY MEMBER HART: Although I agree with the result in this case, I have a serious problem to the extent that the analysis suggests that respondent has violated the FARs because he manipulated the controls in an emergency attempt to reduce the severity of the accident. The problem is not that respondent manipulated the controls while under the influence, but that he placed himself in a position where his responsibility was to manipulate the controls in time of need while under the influence. Moreover, I disagree to the extent the analysis suggests that the Safety Board agrees with the Administrator that a flight instructor instructing a rating pilot need not have a valid medical certificate, an issue which need not be decided in this case.